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Administration of justice at the United Nations

Letter dated 29 April 2008 from the President of the General Assembly addressed to the Chairman of the Fifth Committee

I have the honour to bring to your attention the letter dated 24 April 2008 from Ganeson Sivagurunathan, Chairman of the Ad Hoc Committee on the Administration of Justice at the United Nations (see annex I). Mr. Sivagurunathan requested me to draw your attention to that letter, together with the coordinator's summary of the preliminary observations made in the informal consultations on the draft statute of the United Nations Dispute Tribunal (annex II) and on the draft statute of the United Nations Appeals Tribunal (annex III).

(*Signed*) Srgjan **Kerim**

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Annex I

Letter dated 24 April 2008 from the Chairman of the Ad Hoc Committee on the Administration of Justice at the United Nations to the President of the General Assembly

I have the honour to write to you with regard to agenda item 137, "Administration of justice at the United Nations".

As you are aware, at its 62nd meeting, on 6 December 2007, the General Assembly decided to establish an Ad Hoc Committee on the Administration of Justice at the United Nations for the purpose of continuing the work on the legal aspects of the item, taking into account the results of the deliberations of the Sixth Committee, previous decisions of the Assembly and any further decisions that the Assembly might take on this item during its sixty-second session prior to the meeting of the Ad Hoc Committee (decision 62/519).

The Ad Hoc Committee met from 10 to 18 April and on 21 and 24 April 2008. Its report will be submitted to the General Assembly at its sixty-third session.

During the present session, the Ad Hoc Committee has considered this item in plenary as well as in the form of a Working Group and through informal consultations. During the Committee's informal consultations, delegations presented initial views on the draft statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, which are set forth in annexes I and II to the Secretary-General's note "Administration of justice: further information requested by the General Assembly" (A/62/748 and Corr.1).

During the course of the informal consultations, various delegations provided comments and proposals on the draft statutes that are summarized in the attached documents. Each document is divided into two columns. The left-hand column provides the draft texts as proposed in annexes I and II to document A/62/748 and Corr.1, broken down by article, paragraph and subparagraph. The right-hand column presents alternative language proposed and comments made by various delegations on a preliminary basis only. Where delegations were able to agree *ad referendum*, either on the text presented in annexes I or II to document A/62/748 and Corr.1 or on alternative proposals presented, bold type without brackets is used in the accompanying texts to highlight such agreement. The accompanying texts reflect the status of preliminary discussions to date only.

It would be appreciated if the present letter, together with the coordinator's summary of the preliminary observations made in the informal consultations on the draft statute of the United Nations Dispute Tribunal (annex II) and on the draft statute of the United Nations Appeals Tribunal (annex III), could be brought to the attention of the Chairman of the Fifth Committee.

Ganeson **Sivagurunathan**
Chairman
Ad Hoc Committee on the Administration of Justice at the United Nations

Annex II

Coordinator's summary of the preliminary observations made in the informal consultations on the draft statute of the United Nations Dispute Tribunal

Explanation of terms and presentation by the coordinator

- **Text in bold** and without brackets corresponds to proposals made during the informal consultations by one or more delegations or the coordinator which found broad support on an informal and preliminary basis and/or were not opposed by any delegation.
- [*Text in italics with brackets*] corresponds to proposals made by one or more delegations which one or more other delegation could not immediately accept or for the consideration of which more time was requested.
- The denomination "**option**" in brackets is used when — in the assessment of the coordinator — proposals have been made that can be seen as alternative solutions to a certain problem or question that was raised by delegations in regard to the original draft. This denomination is used solely for purposes of presentation to enhance the readability of the text and shall not be understood as precluding the possibility of merging or combining the proposals or parts thereof.
- Where the right-hand column indicates that delegations have asked for further information or clarification it is understood that the deliberations will have to come back to the text in question at a later stage.
- The absence of comments in the right-hand column indicates that no delegation has raised any concerns in regard to the respective provision of the draft statute as reproduced in the left-hand column.

Article as proposed in annex I to A/62/748 and Corr.1	Alternative language proposed in informal consultations and issues for further consideration
Article 1 A tribunal is established by the present statute to be known as the United Nations Dispute Tribunal.	A tribunal is established by the present statute **as the first instance of the two-tier formal system of administration of justice** [coordinator, on the basis of discussions], to be known as the United Nations Dispute Tribunal.

Article 2	**Article 2**
1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3(1) of the present statute, against the United Nations, including separately administered United Nations funds and programmes:	1. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual, as provided in article 3(1) of the present statute, against the **[**[option 1: *United Nations*] [option 2: *the Secretary-General of the United Nations* [Russian Federation, supported by the Group of 77 (G77) and China]] [option 3: *the United Nations as represented by the Secretary-General*]**]** **[**, including separately administered United Nations funds and programmes [Delegations agreed that this should be reconsidered once a decision is taken on whether the funds and programmes will join the new system].
(a) To appeal an administrative decision that is alleged to be in non-compliance with the terms of appointment or the conditions of employment; or	G77 and China prefers the text as is; the European Union (EU) supports the provision as drafted, subject to a request for further information on the contemporary usage of the expressions "terms of appointment" and "conditions of employment" and on why the terminology differs from that currently used in the statute of the United Nations Administrative Tribunal.

	G77 and China raised the question of whether the term "administrative decision" includes both express and implied decisions. **[Option 2:** *To appeal an administrative decision that is alleged to be in non-compliance with the contract of employment of the staff member or the terms of appointment of such staff member and that has adversely affected him or her. The words 'terms of appointment' mean all pertinent Staff Regulations and Rules in force at the time of the alleged non-compliance. The term 'contract' refers to the staff member's letter of appointment; or"* **[United States of America]].** **[Option 3:** "To appeal an administrative decision *(act or omission)* that is alleged to be in non-compliance with *the duties of the United Nations Secretary-General as the chief administrative officer of the Organization.* *For the purposes of the present statute 'the duties of the United Nations Secretary-General as the chief administrative officer of the Organization' mean those set out in the provisions of the Staff Regulations and Rules, as well as other applicable rules of the Organization, including those derived from standard practice and general principles of law; or".* And delete paragraph (b) below [Russian Federation]].
(b) To appeal an administrative decision imposing a disciplinary measure.	
2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff member requesting a suspension of action in respect of a contested administrative decision that is the subject of an ongoing management evaluation. The Dispute	2. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by **an individual, as provided in article 3(1) of the present statute,** requesting a suspension of action in respect of a contested administrative decision

Tribunal's decision on such an application shall not be subject to appeal.	[that is the subject of an ongoing management evaluation [*retain and reconsider in the light of the rules concerning management evaluation as proposed in para. 30 of the Secretary-General's note 61/758*; further information is requested on the conditions of the ongoing management evaluation [G77 and China]]. The Dispute Tribunal's decision on such an application shall not be subject to appeal.
3. The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by a staff association, as provided in article 3(3) of the present statute, against the United Nations or separately administered United Nations funds and programmes: (a) To enforce the rights of staff associations, as recognized under the Staff Regulations and Rules; (b) To appeal an administrative decision that is alleged to be in non compliance with the terms of appointment or the conditions of employment, on behalf of a group of named staff members who are entitled to file such application under article 2(1) of the present statute and who are affected by the same administrative decision arising out of the same facts; or (c) To support an application filed by one or more staff members who are entitled to appeal the same administrative decision under article 2(1)(a) of the present statute, by means of the submission of a friend-of-the-court brief or by intervention.	G77 and China requested further information on the role of staff associations before taking a decision on this paragraph. [**Option 2:** *delete and replace by*: 3. *The Dispute Tribunal shall be competent to permit or deny leave to an application to file a friend-of-the-court brief by a staff association.* *3bis. The Tribunal also shall be competent to permit staff members who are entitled to appeal the same administrative decision under article 2(1)(a) to intervene in a matter brought by another staff member under article 2(1)(a).*" [United States]]. The United States proposal found a great deal of interest; delegations requested more time to consider it. [*Delete subparagraphs (a) and (b), retain subparagraph (c)* [EU]].
4. In the event of a dispute as to whether the Dispute Tribunal has competence under the present statute, the Tribunal shall decide on the matter.	

5. As a transitional measure, the Dispute Tribunal shall have jurisdiction over: (a) a case transferred to it on 1 January 2009 from a joint appeals board or a joint disciplinary committee established by the United Nations or from another similar body established by a separately administered fund or programme, and (b) an application filed with the United Nations Administrative Tribunal before 1 January 2009, that has not been reviewed by the Administrative Tribunal as of 31 December 2008.	Delegations agreed that all paragraphs dealing with transitional measures should be considered at a later stage.
	[*Add a new paragraph: "6. The Tribunal shall be competent to deal with applications where the cause of complaint arose after 1 January 2009"* [United States]]. Delegations agreed that all paragraphs dealing with transitional measures should be considered at a later stage.

Article 3 1. An application under article 2(1) of the present statute may be filed by: (a) Any staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes; (b) Any former staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes; (c) Any person making claims in the name of an incapacitated or deceased staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes;	

(d) Any person performing work by way of his or her own personal service for the United Nations Secretariat or separately administered United Nations funds and programmes, no matter the type of contract by which he or she is engaged, with the exception of persons in the following categories: (i) Military or police personnel in peacekeeping operations; (ii) Volunteers (other than United Nations Volunteers); (iii) Interns; (iv) Type II gratis personnel (personnel provided to the United Nations by a Government or other entity responsible for the remuneration of the services of such personnel and who do not serve under any other established regime); or (v) Persons performing work in conjunction with the supply of goods or services extending beyond their own personal service or pursuant to a contract entered into with a supplier, contractor or consulting firm.	**[Option 2**: *delete the provision* [United States]]. G77 and China prefers to keep the language for the moment until further information on the need for improvement of redress for non-staff has been received and considered; EU and other delegations can envisage agreeing to the deletion of paragraph (d) if the extension of the new system to other United Nations personnel who are not "staff" in the sense of paragraph 1 (a - c) will be further considered at a later stage (step-by-step approach based on further information to be provided by the Secretariat). Switzerland proposes to include the categories mentioned in (d) (ii - iv), i.e. volunteers (other than United Nations Volunteers), interns and type II gratis personnel, in the scope of the new system. Categories of personnel should not be excluded from the scope of the system unless it is demonstrated that they have an alternative effective remedy at their disposal.
	[*(e) Officials other than staff of the Secretariat;* [Russian Federation]]. **[***(f) Experts on mission who do not serve under a contract as consultants or individual contractors;* [Russian Federation]].
2. A request for a suspension of action under article 2(2) of the present statute may be filed by a staff member of the United Nations, including of the United Nations Secretariat or separately administered United Nations funds and programmes.	2. A request for a suspension of action under article 2(2) of the present statute may be filed by **an individual, as provided in article 3(1) of the present statute**.
3. An application under article 2(3) of the present statute may be filed by a staff association recognized under United Nations staff regulation 8.1 (b).	Retain in brackets until the eventual role of staff associations is agreed (see article 2, para. 3, above).

	[Add a new article 3 bis: *"The Tribunal shall not have any powers beyond those conferred under this statute. Nothing in the statute shall limit or modify the powers of the organs of the United Nations, including the lawful exercise of their discretionary authority in the taking of individual or regulatory decisions, such as those establishing or amending the terms and conditions of employment with the United Nations"* [United States]].

Article 4 1. The Dispute Tribunal shall be composed of three full-time judges and two half-time judges.	
2. The judges shall be appointed by the General Assembly from a list of candidates compiled by the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance.	2. The judges shall be appointed by the General Assembly ... **[Option 1:** *on the recommendation of* the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance [EU, referring to para. 40 of General Assembly resolution 62/228, supported by Canada, Australia and New Zealand]]. **[Option 2:** *while taking into account the views and recommendations of* the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due *regard* shall be given to *geographical distribution* [G77 and China, referring to para. 37 of General Assembly resolution 62/228]].

	[*In the last sentence, replace "shall" with "should"* [United States]].
3. To be eligible for appointment as a judge, a person shall: (a) Be of high moral character; and (b) Possess at least 10 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.	Fiji recommends that in the selection of judges the particular situation of small countries should be taken into account.
4. A judge of the Dispute Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, two of the judges (one full-time judge and one half-time judge) initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Dispute Tribunal for a further non-renewable term of seven years.	The text of paragraphs 4 and 6 as amended are aligned with paragraph 45 of General Assembly resolution 62/228.
5. A judge of the Dispute Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years.	[Add at the end of the paragraph: ", *provided that the unexpired term is less than three years*" [G77 and China]].
6. A former judge of the Dispute Tribunal shall not be eligible for any subsequent appointment within the United Nations, except another judicial post.	6. A former judge of the Dispute Tribunal shall not be eligible [*for a period of [X] years after the termination of his or her office* [EU]] for any subsequent appointment within the United Nations **system**, except another [*elected* [G77 and China]] judicial post. **A former judge of the Dispute Tribunal shall not be eligible for appointment at the Appeals Tribunal.**

	The text of paragraphs 4 and 6 as amended are aligned with paragraph 45 of General Assembly resolution 62/228.
7. The Dispute Tribunal shall elect a President. 8. A judge of the Dispute Tribunal shall serve in his or her personal capacity and enjoy full independence.	
9. A judge of the Dispute Tribunal who has a conflict of interest in a case shall recuse himself or herself.	9. A judge of the Dispute Tribunal who has a conflict of interest [, *a personal bias or prejudice concerning a party, or personal knowledge of dispute evidentiary facts concerning the proceeding, or cannot hear the case due to incapacity, or where a reasonable person might perceive him or her to have a conflict of interest or to have a personal bias or prejudice concerning a party or a matter* [United States]] in a case shall recuse himself or herself. Several delegations indicated that the details concerning conflict of interest could be spelled out in the rules of procedure of the Tribunal. Add at the end of the paragraph: "*Any party has the right to request recusal of a judge for the reasons enumerated above. The decision shall be taken in accordance with the rules of procedure*" [Chile].
10. A judge of the Dispute Tribunal may only be removed by the General Assembly on grounds of proven misconduct or incapacity.	10. A judge of the Dispute Tribunal may only be removed by the General Assembly on grounds of [*proven*] misconduct or incapacity.

11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General.	11. A judge of the Dispute Tribunal may resign, by notifying the General Assembly through the Secretary-General. **The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.**
Article 5 The three full-time judges of the Dispute Tribunal shall normally perform their functions in New York, Geneva and Nairobi, respectively. The Dispute Tribunal may decide to hold sessions in other duty stations, as required by the caseload.	
Article 6 1. The Secretary-General of the United Nations shall make the administrative arrangements necessary for the functioning of the Dispute Tribunal.	[Add at the end: *"including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Tribunal and for judges to travel as necessary to hold sessions at other duty stations"* [Switzerland, G77 and China, supported by EU, opposed by the United States]].
2. The Registries of the Dispute Tribunal shall be established in New York, Geneva and Nairobi, each consisting of a Registrar and such other staff, as necessary.	Reference was made to paragraph 46 of resolution 62/228, whereby the General Assembly established "a Registry" for the Dispute Tribunal. [*2bis. The Registry staff shall review all applications submitted to ensure that they allege facts that, if true, would make them receivable. Where the facts alleged, if true, and/or legal principles relied upon do not make the application receivable, the Registry staff may on its motion or upon motion of the Secretary-General refer the application back to the applicant for clarification.*

	If the applicant fails to respond within [X] days the Registrar shall dismiss the application. If the applicant timely responds, the Registrar shall provide that response, and any response by the Secretary-General thereto, to the Dispute Tribunal along with the application file [United States]] [Questions were raised as to the content and the proper placement of this proposal].
3. The expenses of the Dispute Tribunal shall be borne by the United Nations.	
4. Compensation ordered by the Dispute Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes, as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Dispute Tribunal.	
	[*4 bis. The Dispute Tribunal may order such compensation to be paid in full or in part from the remuneration of the manager responsible for the contested administrative decision, if the Dispute Tribunal finds that such a decision that has significantly damaged the interests of the applicant was manifestly taken with malicious intent. Without prejudice to article 9(2), the Dispute Tribunal during its deliberations should provide the manager who is allegedly responsible for such a decision with the opportunity to assert her or his rights in accordance with the due process of law standards. Nothing in this article precludes the Dispute Tribunal from taking measures in accordance with article 10(7)* [Russian Federation]].

Article 7 1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules.	1. Subject to the provisions of the present statute, the Dispute Tribunal shall establish its own rules **of procedure, which shall be subject to the approval by the General Assembly**. The question was raised as to what would happen if the "approval" of the General Assembly were delayed for whatever reason. Is there a need to come up with an express provision allowing, for example, a provisional application of the rules established by the Tribunal until such General Assembly decision has been taken?
2. The rules shall include provisions concerning: (a) Organization of work; (b) Presentation of submissions and the procedure to be followed in respect thereto; (c) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process; (d) Intervention by persons not party to the case whose rights may be affected by the judgement; (e) Oral hearings; (f) Publication of judgements; and (g) Other matters relating to the functioning of the Dispute Tribunal.	[On subparagraph (d): the exact formulation concerning third-party intervention needs to be looked at once the decision on the extent of such intervention has been decided; see the proposal on article 2, paragraph 3, above].

Article 8 1. An application shall be receivable if: (a) The Dispute Tribunal is competent to hear and pass judgement on the application, pursuant to article 2 of the present statute; (b) An applicant is eligible to file an	

application, pursuant to article 3 of the present statute; (c) An applicant has previously submitted the contested administrative decision for management evaluation, where required;	(c) An applicant has previously submitted the contested administrative decision for management evaluation, **[**where required**][***unless such management evaluation is expressly excluded***]**; **and** The requirements for management evaluation should be spelled out in the statute [G77 and China].
(d) Unless the Dispute Tribunal has suspended or waived the deadline, the application is filed within the following applicable deadline: (i) In cases where a request for a management evaluation is required, the application must be filed:	Article 8, paragraph 1 (d), gave rise to a number of overlapping concerns and proposals, inter alia, on the length of the deadlines and their calculation as well as on the competence of the Tribunal to waive them and the question of the implementation of a mediation agreement. Based on the discussion and various proposals made by a number of delegations, the coordinator has proposed to restructure and redraft article 8, paragraph 1 (d), and paragraphs 2 and 3. The coordinator submits, for further consideration, the following proposals: • That the question of the length of applicable deadlines and their calculation in calendar days be covered in subparagraph (d) (i – iv); • That the issue of waiver of the deadlines for the filing of an application with the Dispute Tribunal — i.e., not the deadlines for the management evaluation, as requested by G77 and China — be taken up immediately afterwards in subparagraph (2); • That the question of implementation of a mediation agreement would come under subparagraph (3): *(d) If the application is filed within the following applicable deadline:* *(i) In cases where a request for a management evaluation is required, the application must be filed:*

a. Within 30 days of the applicant's receipt of the response to the management evaluation; or b. Within 30 days from the expiry of the 45-day response period, if no response to the management evaluation was provided; (ii) In cases where a request for a management evaluation is not required, the application must be filed within 30 days of the notification of the applicant's receipt of the administrative decision.	*a. Within [30-90] calendar days of the applicant's receipt of the response to his submission of the decision to management evaluation; or* *b. Within [30-90] calendar* days from the expiry of the 45-day response period *if the applicant did not receive a response within 30 calendar days after the submission of the decision to management evaluation for disputes arising at New York Headquarters and 45 calendar days for cases arising at offices away from Headquarters;* *(ii) In cases where a request for a management evaluation is not required, the application must be filed within 30 calendar days of the notification of the applicant's receipt of the administrative decision;* *(iii) In cases where the request is filed by an applicant under article 3(1)(c), the above deadlines are extended by an additional [X] calendar days;* *(iv) [Insert provision on the impact of mediation on the deadline for the filing of the application*] The question of when and under which conditions a management evaluation is required should be spelled out in the statute [G77 and China].

2. An application shall not be receivable if the dispute arising from contested administrative decision had been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation, which shall be receivable if the agreement has not been implemented in a timely manner or in accordance with the agreement.	[*Exchange paragraphs 2 and 3, and rephrase as follows:* *2.* The Dispute Tribunal may decide *[upon request by the applicant]* *(a) To extend, for a period [to be determined by the Tribunal][of up to 30 days], the deadline under article 8(1)(d) where the applicant can show that [the exigencies of official duty and/or other good cause] prevent him or her in the exercise of reasonable diligence from meeting the deadlines;* *(b) To waive the deadline under article 8(1)(d) [option 1: only in exceptional cases] [*option 2*: only where the applicant can [show good cause][show that he could not meet the deadline for reasons not under his control]] [*option 3*: only where the applicant did not or could not discover through the exercise of due diligence that the period had begun to run]*].
3. The Dispute Tribunal may decide to suspend or waive the deadlines in any case.	[*Exchange paragraphs 2 and 3, and rephrase as follows:* *3. An application shall not be receivable if the dispute has been resolved by an agreement reached through mediation. However, an applicant may file an application to enforce the implementation of an agreement reached through mediation if the agreement has not been implemented [option 1: within the period set for that purpose in the mediation agreement, if any] [option 2: within [X] days after the agreement]* [coordinator]].

4. The filing of an application shall not have the effect of suspending the execution of the contested administrative decision.	4. The filing of an application [, *or a request for suspension of action under article 2(2),* [United States; EU]] shall not have the effect of suspending the execution of the contested administrative decision.
5. An application and other submissions shall be filed in any of the official languages of the United Nations.	
6. As a transitional measure, a case transferred on 1 January 2009 pursuant to article 2 (5) of the present statute must also satisfy deadlines for transitional measures applicable to such cases to be provided separately by an administrative issuance.	See recommendation on article 1, paragraph 5, above.

Article 9	**Article 9**
1. The Dispute Tribunal may order production of documents or such other evidence as it deems necessary.	[At the end of the provision, add the following text: "*except that the Secretary-General may withhold evidence if he or she determines that the introduction of such evidence would hinder the operation of the United Nations because of the secret or confidential nature of the evidence*" [United States]]. Many delegations, while acknowledging the need, in exceptional cases, to protect confidentiality, were of the view that this decision should not be left to the discretion of the Secretary-General, but that the Tribunal itself should decide on the handling of such type of evidence. Where the Secretary-General considered this necessary, he or she could submit a request to the Tribunal.

2. The Dispute Tribunal shall decide whether the personal appearance of the applicant is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.	2. The Dispute Tribunal shall decide whether the personal appearance of the applicant **or any other staff** is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance.
3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that circumstances require the proceedings to be closed.	3. The oral proceedings of the Dispute Tribunal shall be held in public unless the Dispute Tribunal decides, at its own initiative or at the request of either party, that circumstances require the proceedings to be closed **[***where the Tribunal determines in writing that the need to preserve the confidentiality of evidence to be presented outweighs the public's interest in a public hearing* [United States]].
Article 10 1. The Dispute Tribunal shall suspend proceedings in a case, at the request of both parties to the application.	**Article 10** 1. The Dispute Tribunal shall suspend proceedings in a case at the **written** request of **the** parties, **for a time to be specified by it** [*in writing* [United States]].
2. At any time during its deliberations, the Dispute Tribunal may order the following measures, which are final and without appeal: (a) An interim order to provide temporary relief to either party, including a suspension of action of the contested administrative decision; and	2. At any time during its deliberations, the Dispute Tribunal may order **an interim measure, which is** [*final and* [G77 and China]] **without appeal**, to provide temporary relief to either party, including a suspension of action of the contested administrative decision" [Modify the text above as follows: "At any time during its deliberations, *and upon a written determination that there is a substantial likelihood that a party will prevail on the merits and that there is a substantial threat of irreparable harm to that party*, the Dispute Tribunal may order an interim measure[, which is [final and] without

	appeal,] to provide temporary relief to *a* party, including a suspension of action of the contested administrative decision" [United States]]. The notion of "temporary relief" still needs further clarification.
(b) Referral of a case for mediation.	**2 bis.** **[Option 1:** *At any time during its deliberations, parties may be referred to mediation by the Dispute Tribunal, unless any party requests otherwise [time frame should be set in accordance with the terms of reference of the Mediation Division]. In case of failure of mediation, the Dispute Tribunal shall continue with its proceedings* [G77 and China]]. **[Option 2:** *Unless the parties object, the Dispute Tribunal may suspend the proceedings for a limited period of time in order to refer the case to mediation if the Tribunal is convinced that such referral is in the interests of justice and the effective functioning of the Dispute Tribunal. If a mediation agreement is not reached within this period of time, the Dispute Tribunal shall continue with its proceedings unless the parties agree otherwise* [Canada]]. **[Option 3** *(coordinator): Where the Tribunal during the course of the proceedings sees the possibility that the parties may come to an agreement, it may suspend the proceedings for a limited time and refer the case/the parties to mediation, if none of the parties objects. If a mediation agreement is not reached within this period of time, the Tribunal shall continue with its proceedings].*

3. Prior to a determination of the merits of a case, should the Dispute Tribunal find that a relevant procedure prescribed in the Staff Regulations and Rules or applicable administrative issuances has not been observed, the Dispute Tribunal may remand the case for institution or correction of the required procedure. In such cases, the Dispute Tribunal may order the payment of compensation for procedural delay, which is not to exceed the equivalent of three months' net base salary.	[At the end of the first sentence, after "procedure", add: ", *which, in any case, should not exceed three months*" [G77 and China]]. [With respect to the second sentence: [**option 1:** *delete* [United States]] [**option 2:** keep and add at the end: ", *to the applicant for such loss as may have been caused by such procedural delay*" [G77 and China]].
4. Where the Dispute Tribunal determines that an application is well founded, it may order one or more of the following: (a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Dispute Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered;	Delegations raised questions on the meaning and scope of the rescission, specific perfomance or compensation to be ordered by the Tribunal. The situation in which the applicant does not agree to payment of alternative compensation, for example in cases of non-promotion, also needed further consideration. Modify the chapeau as follows: "*As part of its judgement* the Dispute Tribunal *may* order one or more of the following" [EU]. At the end of the subparagraph, add the following text: "*provided that such compensation shall not exceed the equivalent of two years' net base salary for the applicant except under exceptional circumstances, and where the Dispute Tribunal determines that not only was the Secretary-General's or the Organization's view of the internal law of the United Nations incorrect, but a reasonable person could have held that view*" [United States]. Further consideration is needed; the current text will be kept in brackets.

(b) Compensation, which shall not normally exceed the equivalent of two years' net base salary of the applicant. The Dispute Tribunal may, however, order the payment of a higher indemnity in exceptional cases and shall provide the reasons for that decision;	See subparagraph (a) above.
(c) Interest; or	Delegations raised questions about which interest the Tribunal may order here. Some said that this question should be left to the Fifth Committee. The text will be kept in brackets.
(d) Costs.	Delegations raised questions about which costs the Tribunal may order here. Some said that this question should be left to the Fifth Committee. Text to kept in brackets.
5. Where the Dispute Tribunal determines that a party has manifestly abused the proceedings before the Tribunal, it may award costs against that party.	The question was raised as to whether "costs" as mentioned here would cover costs of the Tribunal and/or costs of the other party, if any. Further consideration needed, text in brackets. [Replace "it may award costs against that party" with "*it may require that party to pay court costs*" [United States]].
6. The Dispute Tribunal may not award exemplary or punitive damages.	6. The Dispute Tribunal **shall** not award exemplary or punitive damages.
7. The Dispute Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.	Many delegations supported the view that when deciding on accountability, consideration should be given to staff rule 112.3.

8. Judgements by the Dispute Tribunal shall normally be rendered by a single judge. The Dispute Tribunal may decide to refer a case to a panel of three judges to render a judgement.	8. Cases by the Dispute Tribunal shall [normally [*delete*: United States]] be **considered** by a single judge. [*In exceptional/special cases* [Brazil, Switzerland, Japan] the Dispute Tribunal may decide to refer a case to a panel of three judges **for consideration]**.[*Delete the second sentence*: United States; *contra*: G77 and China]. "Cases *before* the Dispute Tribunal shall *be considered* by a single judge. The Dispute Tribunal may decide to refer a case to a panel of three judges *when necessary by reason of the complexity or nature of the case*" [EU]. If the second sentence is maintained, the issue of the majority required needs to be addressed [Chile].

Article 11	**Article 11**
1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the reasons on which they are based.	1. The judgements of the Dispute Tribunal shall be issued in writing and shall state the **[**[reasons][facts][law]**]**on which they are based.
2. The deliberations of the Dispute Tribunal shall be confidential.	
3. The judgements of the Dispute Tribunal shall be binding upon the parties.	3. The judgements of the Dispute Tribunal shall be binding upon the parties. **[Option 1:** *The judgement becomes final and executable upon the expiration of the time frame set in the statute of the Appeals Tribunal, provided that no appeal is filed within the said time frame* [G77 and China]**].**

	[Option 2: *The judgements are subject to appeal in accordance with article 7(1)(c) of the statute of the Appeals Tribunal. In the absence of such appeal, they shall be final* [EU]**].** This provision should be considered also in the light of the statute of the Appeals Tribunal [Japan]. This paragraph should become paragraph 1 of article 11 [Chile].
4. The judgements of the Dispute Tribunal shall be drawn up in any of the six official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.	
5. A copy of the Dispute Tribunal's judgements shall be communicated to each party in the case.	5. A copy of the Tribunal's judgement shall be communicated to each party in the case *in the language in which the application was originally submitted* [Canada, as revised by the coordinator].
6. The judgements of the Dispute Tribunal shall be published and made generally available by the Registry of the Tribunal.	6. The judgements of the Dispute Tribunal shall be published **[***as appropriate and feasible* [United States] *while protecting personal data* [EU]**]** and made generally available by the Registry of the Tribunal. *Retain the text unchanged* [G77 and China]. Delegations requested more information on the current practice of the United Nations Administrative Tribunal.

Article 12	Article 12
1. Either party may apply to the Dispute Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was issued, unknown to the Dispute Tribunal and to the party claiming revision, provided that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement.	[1. Either party may apply to [[the Dispute Tribunal][the Appeals Tribunal] [Chile]] for a revision of a [*final* [G77] judgement [*which is final* [China]] on the basis of the discovery of a decisive fact which was, at the time the judgement was **rendered**, unknown to the Dispute Tribunal and to the party claiming revision, provided that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement]. *Introduce also a deadline for the specific period of time after a party discovers a fact, as is provided for in the statute of the current United Nations Administrative Tribunal.*
2. Clerical or arithmetical mistakes may at any time be corrected by the Dispute Tribunal either on its own motion or on the application of any of the parties.	The question was raised as to how "at any time" would relate to cases where an appeal has already been submitted.
3. Either party may apply to the Dispute Tribunal for interpretation or an order for execution of a judgement.	3. Either party may apply to the Dispute Tribunal for interpretation of a [*final* [G77 and China]] judgement. **3 bis. Either party may apply to the Dispute Tribunal for** an order for execution of a [*final* [G77 and China]] judgement. Questions of a proper time frame for execution and the relation of an order for execution to the issue of appealability were raised. To address these issues, the coordinator proposes the following: add at the end of paragraph 3bis above:

	"if the judgement has become final, and, where the Tribunal has ordered execution of the judgement within a certain period of time, such execution has not been carried out".

Article 13 The present statute may be amended by decision of the General Assembly.	

General comments

- Headlines should be added to the articles [coordinator, Switzerland, Israel].
- Further consideration should be given to the question of dissemination of the judgements of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, taking into account, inter alia, the issue of the language of such judgements [Mexico].
- Further consideration should be given to the establishment of an organic link between the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal [Ghana].
- The issue of time limits should be considered throughout the text [G77 and China].

Annex III

Coordinator's summary of the preliminary observations made in the informal consultations on the draft statute of the United Nations Appeals Tribunal

Explanation of terms and presentation by the coordinator

- **Text in bold** and without brackets corresponds to proposals made during the informal consultations by one or more delegations or the coordinator which found broad support on an informal and preliminary basis and/or were not opposed by any delegation.
- [*Text in italics with brackets*] corresponds to proposals made by one or more delegations which one or more other delegation could not immediately accept or for the consideration of which more time was requested.
- The denomination "**option**" in brackets is used when – in the assessment of the coordinator – proposals have been made that can be seen as alternative solutions to a certain problem or question that was raised by delegations in regard to the original draft. This denomination is used solely for purposes of presentation to enhance the readability of the text and shall not be understood as precluding the possibility of merging or combining the proposals or parts thereof.
- Where the right-hand column indicates that delegations have asked for further information or clarification it is understood that the deliberations will have to come back to the text in question at a later stage.
- The absence of comments in the right-hand column indicates that no delegation has raised any concerns in regard to the respective provision of the draft statute as reproduced in the left-hand column.

Article as proposed in annex II to A/62/748 and Corr.1	Alternative language proposed in informal consultations and issues for further consideration
Article 1 A tribunal is established by the present statute to be known as the United Nations Appeals Tribunal.	A tribunal is established by the present statute **as the second instance of the two-tier formal system of administration of justice** [*coordinator, on the basis of discussions*], to be known as the United Nations Appeals Tribunal.

Article 2 1. The Appeals Tribunal shall be competent to hear and pass judgement on an appeal filed against a judgement rendered by the United Nations Dispute Tribunal, in which it is asserted that the Dispute Tribunal has: (a) Exceeded its jurisdiction or competence; (b) Failed to exercise jurisdiction vested in it; (c) Committed a fundamental error in procedure that has occasioned a failure of justice; (d) Erred on a question of law; or (e) Erred on a question of material fact.	Keep for the moment. The qualifier of the facts ("material", "decisive" or "relevant material") requires further consideration [G77 and China]. In deciding this issue, consideration should be given to the number of judges sitting on first instance [G77 and China; Japan]. Replace with the following text [United States]: "*(e) Failed to consider evidence relevant to the issue that was proferred and was excluded or not admitted by the Tribunal;* *(f) Considered evidence not relevant to the*

	issues properly before the Tribunal; or *(g)Failed to provide a factual basis in the judgement to support the judgement.*" Replace with the following text: "(e) Erred on a question of fact, *resulting in a manifestly unreasonable decision*" [EU].
2. An appeal may be filed by either party (i.e. the applicant or the respondent) to a judgement of the Dispute Tribunal, or by the successor of such party.	With respect to successors, *the text should be harmonized with article 3(1)(c) of the United Nations Dispute Tribunal statute* [New Zealand].
	Insert a paragraph 2bis that would read: "The Appeals Tribunal in hearing or passing judgement pursuant to article 2(1) may affirm, reverse, modify or remand the judgement of the Dispute Tribunal. It may also issue all writs necessary or appropriate in aid of its jurisdiction and consonant with this statute" [United States] [This provision could be included in article 9 [Norway]].
3. The Appeals Tribunal shall decide upon its own competence.	*Following the request to harmonize the text with article 2(4) of the* Dispute Tribunal *statute, the coordinator proposes the following language:* *"In the event of a dispute as to whether the Appeals Tribunal has competence under the present statute, the Tribunal shall decide on the matter."*
4. The Appeals Tribunal shall be competent to hear and pass judgement upon an application alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of the decision of the United Nations Joint Staff Pension Board submitted by:	*This provision should remain in square brackets* pending a decision on whether the Joint Staff Pension Fund will have access to the system [G77 and China].

(a) Any staff member of a member organization of the Pension Fund which has accepted the jurisdiction of the Appeals Tribunal in Pension Fund cases who is eligible under article 21 of the regulations of the Fund as a participant in the Fund, even if his or her employment has ceased, and any person who has acceded to such staff member's rights upon his or her death; (b) Any other person who can show that he or she is entitled to rights under the regulations of the Pension Fund by virtue of the participation in the Fund of a staff member of such member organization.	*This provision should be moved to the Dispute Tribunal statute* [Russian Federation; supported by EU and G77 and China]. *Issues to be discussed in the context of transitional arrangements* [EU; Japan].
5. The Appeals Tribunal shall be competent to hear and pass judgement on an application filed against a specialized agency brought into relationship with the United Nations in accordance with the provisions of Articles 57 and 63 of the Charter of the United Nations or other international organization or entity established by a treaty and participating in the common system of conditions of service, where a special agreement has been concluded between the agency, organization or entity concerned and the Secretary-General of the United Nations to establish the terms of the Appeals Tribunal's jurisdiction. Such special agreement shall provide that the agency, organization or entity concerned shall be bound by the judgements of the Appeals Tribunal and be responsible for the payment of any compensation awarded by the Appeals Tribunal in respect of its own staff members and shall include, inter alia, provisions concerning its participation in the administrative arrangements for the functioning of the Appeals Tribunal and concerning its sharing of the expenses of the Appeals Tribunal.	*This provision should be moved to the Dispute Tribunal statute* [Russian Federation]. *Issues to be discussed in the context of transitional agreements* [EU].

Article 3 1. The Appeals Tribunal shall be composed of seven judges.	
2. The judges of the Appeals Tribunal shall be appointed by the General Assembly from a list of candidates compiled by the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance.	**[Option 1:** "The judges of the Appeals Tribunal shall be appointed by the General Assembly *on the recommendation of* the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due consideration shall be given to gender and regional balance" [EU]]. **[Option 2:** "The judges of the Appeals Tribunal shall be appointed by the General Assembly, *while taking into account the views and recommendations of* the Internal Justice Council established pursuant to General Assembly resolution 62/228. No two judges shall be of the same nationality. Due *regard* shall be given to *geographical distribution*" [G77 and China]]. [*In the last sentence, replace "shall" with "should"* [United States]].
3. To be eligible for appointment as a judge, a person shall: (a) Be of high moral character; and (b) Possess at least 15 years of judicial experience in the field of administrative law, or the equivalent within one or more national jurisdictions.	Fiji recommends that in the election of judges the particular situation of small countries should be taken into account.

4. A judge of the Appeals Tribunal shall be appointed for one non-renewable term of seven years. As a transitional measure, three of the judges initially appointed, to be determined by drawing of lots, shall serve three years and may be reappointed to the same Appeals Tribunal for a further non-renewable term of seven years.	The text of paragraphs 4 and 6 as amended are aligned with para. 45 of General Assembly resolution 62/228.
5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years.	5. A judge of the Appeals Tribunal appointed to replace a judge whose term of office has not expired shall hold office for the remainder of his or her predecessor's term, and may be reappointed for one non-renewable term of seven years, *provided that the unexpired term is less than three years*" [G77 and China].
6. A judge of the Appeals Tribunal shall not be eligible for any appointment within the United Nations, except another judicial post.	6. A **former** judge of the Appeals Tribunal shall not be eligible [*for a period of [X] years after the termination of his or her office* [EU]] for any subsequent appointment within the United Nations **system**, except another [*elected* [G77 and China]] judicial post. **A former judge of the Appeals Tribunal shall not be eligible for appointment at the Dispute Tribunal.**
7. The Appeals Tribunal shall elect a President and two Vice-Presidents.	
8. A judge of the Appeals Tribunal shall serve in his or her personal capacity and enjoy full independence.	

9. A judge of the Appeals Tribunal who has a conflict of interest in a case shall recuse himself or herself.	9. A judge of the Appeals Tribunal who has a conflict of interest **[***, a personal bias or prejudice concerning a party, or personal knowledge of dispute evidentiary facts concerning the proceeding, or cannot hear the case due to incapacity, or where a reasonable person might perceive him or her to have a conflict of interest or to have a personal bias or prejudice concerning a party or a matter* [United States]**]** in a case shall recuse himself or herself. Several delegations indicated that the details concerning conflict of interest could be spelled out in the rules of procedure of the Tribunal. Add, at the end of the paragraph: "*Any party has the right to request recusal of a judge for the reasons enumerated above. The decision shall be taken in accordance with the rules of procedure*" [Chile].
10. A judge of the Appeals Tribunal may only be removed by the General Assembly on grounds of proven misconduct or incapacity.	10. A judge of the Appeals Tribunal may only be removed by the General Assembly on grounds of **[***proven***]** misconduct or incapacity.
11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General.	11. A judge of the Appeals Tribunal may resign, by notifying the General Assembly through the Secretary-General. **The resignation shall take effect from the date of notification, unless the notice of resignation specifies a later date.**

Article 4 1. The Appeals Tribunal shall hold ordinary sessions at dates to be fixed by its rules, subject to the determination of the President that there is a sufficient number of cases to justify holding the session.	Further clarification is needed on whether the ordinary sessions of the Appeals Tribunal will be held in New York, to avoid travel of the Registry (see art. 5, para. 2) [New Zealand].

2. Extraordinary sessions may be convoked by the President, as required by the caseload.	

Article 5 1. The Secretary-General shall make the administrative arrangements necessary for the functioning of the Appeals Tribunal.	[At the end, add: "*, including provisions for the travel and related costs of staff whose physical presence before the Tribunal is deemed necessary by the Appeals Tribunal and for judges to travel as necessary to hold sessions at the other duty stations*" [G77 and China; Switzerland; EU]].
2. The Registry of the Appeals Tribunal shall be established in New York, consisting of a Registrar and such other staff, as necessary.	See comment on article 4, paragraph 1 [New Zealand].
3. The expenses of the Appeals Tribunal shall be borne by the United Nations.	
4. Compensation ordered by the Appeals Tribunal shall be paid by the United Nations Secretariat or separately administered United Nations funds and programmes as applicable and appropriate, or by the specialized agency, organization or entity that has accepted the jurisdiction of the Appeals Tribunal.	

Article 6 1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its rules.	1. Subject to the provisions of the present statute, the Appeals Tribunal shall establish its own rules **of procedure, which shall be subject to the approval by the General Assembly**.

	The question was raised as to what would happen if the "approval" by the General Assembly were delayed for whatever reason. Is there a need to come up with an express provision allowing, for example, a *provisional application* of the rules established by the Tribunal until such General Assembly decision has been taken?
2. The rules shall include provisions concerning: (a) Election of the President and Vice-Presidents; (b) Composition of the Tribunal for its sessions; (c) Organization of work; (d) Presentation of submissions and the procedure to be followed in respect thereto; (e) Procedures for maintaining the confidentiality and inadmissibility of verbal or written statements made during the mediation process; (f) Intervention by persons not party to the case whose rights may be affected by the judgement; (g) Oral hearings; (h) Publication of judgements; and (i) Other matters relating to the functioning of the Tribunal.	Replace subparagraph (f) with: "*The filing of friend-of-court briefs, upon motion and with the permission of the Appeals Tribunal*". The United States deemed intervention by persons not parties to the case under review inappropriate at the Appeals Tribunal level. *Subparagraph (g) needs modification for consistency with the new language suggested for article 8 below* [United States].

Article 7	
1. An appeal shall be receivable if: (a)The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2(1) of the present statute; (b) The appellant is eligible to file the appeal, pursuant to article 2(2) of the	Further consideration should be given to the problem of execution of the judgement of the Dispute Tribunal in the 45-day period in which it is subject to appeal [China]. In subparagraph (c), track language in the Dispute Tribunal statute. After "or", add: ", *pursuant to*

present statute; and (c) The appeal is filed within forty-five days of receipt of the judgement of the Dispute Tribunal, or the Appeals Tribunal has suspended or waived the deadline.	*article 7(3),*". See also comment made on article 8 of the Dispute Tribunal statute [United States]. The timeline should be considered in accordance with the seat of the court and other duty stations. The right of the Tribunal to waive or suspend the deadline should be restricted [G77 and China].
2. For purposes of applications alleging non-observance of the regulations of the United Nations Joint Staff Pension Fund arising out of a decision of the United Nations Joint Staff Pension Board, an application shall be receivable if filed within ninety days from the receipt of the Board's decision.	See comments on article 2(4) above.
3. The Appeals Tribunal may decide to suspend or waive the deadlines in any case.	Replace "in any case" with: "*only in exceptional cases*" [EU]. After "waive", add: "*on reasonable grounds*" [Russian Federation]. *Delete the provision or reformulate as follows: "The Appeals Tribunal may decide to waive the deadlines where it determines that the applicant has shown good cause and where the applicant can show that he or she could not have known the deadline had run in the exercise of reasonable diligence. The Appeals Tribunal may also toll the deadlines for up to 30 additional days where the applicant can show that the exigencies of official duty prevent him or her in the exercise of reasonable diligence from meeting those deadlines"* [United States]. Modify as follows: "The Appeals Tribunal may *not* decide to suspend or waive the deadlines*,, except in exceptional circumstances,* in any case" [G77 and China].

4. The filing of appeals shall not have the effect of suspending the execution of the judgement contested.	*Delete* [United States]. This paragraph leads to confusion with regard to the enforceability of the Dispute Tribunal judgements, which requires further discussion [G77 and China]. Replace by: "The filing of appeals *shall have* the effect of suspending the execution of the judgement contested, *unless such judgement has already been executed in accordance with the statute of the Dispute Tribunal*" [China].
5. An appeal and other submissions shall be filed in one of the official languages of the United Nations.	5. An appeal and other submissions shall be filed in **any** of the official languages of the United Nations.

Article 8 1. The Appeals Tribunal may order production of documents or such other evidence as it deems necessary. 2. The Appeals Tribunal shall decide whether the personal appearance of the appellant is required at oral proceedings and the appropriate means for satisfying the requirement of personal appearance. 3. The judges assigned to a case will determine whether to hold oral hearings. 4. The oral proceedings of the Appeals Tribunal shall be held in public unless the Appeals Tribunal decides at its own initiative or at the request of either party, that circumstances require the proceedings to be closed.	Since the Appeals Tribunal deals with questions of law, provisions on oral hearings, etc., should be different from those at the Dispute Tribunal. Replace the entire article with: "*The Appeals Tribunal shall determine whether to hear argument. If it determines to hear argument on the pleadings that have been filed before the Appeals Tribunal, it shall also determine whether to do so in closed or open session. It may only close the session where the Dispute Tribunal made a determination that X pursuant to article Y of the statute of the Dispute Tribunal" [governing closure of hearings]* [United States]. G77 and China: *keep*.

Article 9	
1. The Appeals Tribunal may order, inter alia, the following: (a) Rescission of the contested decision; (b) Specific performance; (c) Compensation; (d) Interest; and (e) Costs.	This provision should be brought in line with the text of article 10(4) of the Dispute Tribunal statute [China; United States; Guatemala; Israel]. Further clarification is required on the issues covered by this paragraph, especially specific performance [G77 and China]. See also the comments made on article 10(4) of the Dispute Tribunal statute. In subparagraph (d), the word "and" should be replaced with "and/or" [G77 and China]. *Redraft the entire paragraph as follows:* "1. The Appeals Tribunal *may order* the following: *"(a) Rescission of the contested administrative decision or specific performance, provided that, where the contested administrative decision concerns appointment, promotion or termination, the Appeals Tribunal shall also set an amount of compensation that the respondent may elect to pay as an alternative to the rescission of the contested administrative decision or specified performance ordered, provided that such compensation shall not exceed the equivalent of two years' net base salary for the applicant except under exceptional circumstances in which the Dispute Tribunal determines that, not only was the Secretary-General or Organization's view of the*

	internal law of the United Nations incorrect, but no reasonable person could have held their view, and provides such a determination in writing; *"(b) Compensation, which shall not normally exceed the equivalent of two years' net base salary of the applicant. The Appeals Tribunal may, however, order the payment of a higher indemnity in exceptional cases in which the Dispute Tribunal determines that, not only was the Secretary-General or Organization's view of the internal law of the United Nations incorrect, but no reasonable person could have held their view, and provides such a determination in writing*" [United States]. Further consideration is needed on whether the Appeals Tribunal should be reversing or granting appeal and remanding (usually, the latter should be used if there is an error of law to allow the Dispute Tribunal to redetermine damages, if any) [United States].
2. Where the Appeals Tribunal determines that a party has manifestly abused the appeals process, it may award costs against that party.	The comments made on article 10(5) of the Dispute Tribunal statute should also apply to this provision [EU]. Replace "it may award costs against that party" with "*it may require that party to pay court costs*" [United States].

3. The Appeals Tribunal may not award exemplary or punitive damages.	The comments made on article 10(6) should also apply to this provision. 3. The Appeals Tribunal **shall** not award exemplary or punitive damages.
4. The Appeals Tribunal may order interim measures and/or injunctive relief.	Further clarification is needed on what is "injunctive relief" [G77 and China]. *Delete* [United States].
5. The Appeals Tribunal may remand a case to the Dispute Tribunal and decide to award payment in connection with its decision to remand due to procedural delay, which is not to exceed the equivalent of three months' net base salary.	*Delete*. Further clarification is needed on the rationale of this provision [United States].
6. The Appeals Tribunal may refer appropriate cases to the Secretary-General or executive heads of separately administered United Nations funds and programmes for possible action to enforce accountability.	This provision requires further consideration. While deciding on accountability, consideration should be given to staff rule 112.3. See the comments made on article 10(7) of the Dispute Tribunal statute [G77 and China].
Article 10 1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges and decided by a majority vote.	1. Cases before the Appeals Tribunal shall normally be reviewed by a panel of three judges *and shall be decided by a majority vote* [EU].
2. Where the President or any two judges sitting in a particular case consider that the case raises a significant question of law, at any time before judgement is rendered, the case may be referred for consideration by the whole Tribunal. Quorum in such cases shall be five judges.	

3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the reasons on which they are based.	3. The judgements of the Appeals Tribunal shall be issued in writing and shall state the [[reasons] [facts] [law]] on which they are based.
4. The deliberations of the Appeals Tribunal shall be confidential.	
5. The judgements of the Appeals Tribunal shall be binding upon the parties.	
6. The judgements of the Appeals Tribunal shall be final and without appeal, subject to the provisions of article 11 of the present statute.	
7. The judgements of the Appeals Tribunal shall be drawn up, in any of the official languages of the United Nations, in two originals, which shall be deposited in the archives of the United Nations.	
8. A copy of the judgement shall be communicated to each party to the case.	8. A copy of the *Tribunal's* judgement shall be communicated to each party *in* the case *in the language in which the application was originally submitted* [Canada, as revised by the coordinator].
9. The judgements of the Appeals Tribunal shall be published and made generally available by the Registry of the Tribunal.	

Article 11	
1. Either party may apply to the Appeals Tribunal for a revision of a judgement on the basis of the discovery of a decisive fact which was, at the time the judgement was issued, unknown to the Appeals Tribunal and to the party claiming revision, provided	Further consideration should be given to the question of who determines that a fact is "decisive" [G77 and China].

that such ignorance was not due to negligence. The application must be made within one year of the date of the judgement.	"... revision of *its* judgement ..." [coordinator] *Delete the provision* [United States]. *Introduce a deadline for the specific period of time after a party discovers the fact, as provided in the current statute of the United Nations Administrative Tribunal* [EU].
2. Clerical or arithmetical mistakes may at any time be corrected by the Appeals Tribunal either on its own motion or on the application of any of the parties.	
3. Either party may apply to the Appeals Tribunal for interpretation or an order for execution of a judgement.	[Refer to "*its* judgement"; see para. 1 above]. 3. Either party may apply to the Appeals Tribunal for interpretation of a judgement. **3bis. Either party may apply to the Appeals Tribunal for** an order for execution of a judgement.

Article 12 The present statute may be amended by decision of the General Assembly.	

General comments

- The text of the United Nations Appeals Tribunal draft statute should be brought in line, where appropriate, with the United Nations Dispute Tribunal draft statute and any modifications made thereto by the Ad Hoc Committee [coordinator].
- The issue of time limits for appeal should be considered throughout the text [G77 and China].
- The draft elements of the rules of procedure for the United Nations Dispute Tribunal and United Nations Appeals Tribunal that were included in annexes V and VI to the report of the Secretary-General (A/62/294) contain a number of provisions which need to be revised [United States].